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**Agriculture & Natural Resources  
Committee**

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**E2SSB 5923**

**Brief Description:** Regarding aquatic invasive species enforcement and control.

**Sponsors:** Senate Committee on Ways & Means (originally sponsored by Senators Swecker, Jacobsen and Sheldon).

**Brief Summary of Engrossed Second Substitute Bill**

- Includes commercial watercraft, watercraft transportation equipment, and watercraft auxiliary equipment in the Aquatic Invasive Species Enforcement and Prevention Programs.
- Creates the crimes of unlawfully avoiding aquatic invasive species, and unlawfully introducing a prohibited aquatic animal species.
- Exempts the person in possession of contaminated watercraft from criminal penalties relating to invasive species if that person complies with the Washington Department of Fish and Wildlife (WDFW) directives for the proper decontamination of the watercraft and equipment.
- Requires the WDFW to develop a programmatic environmental impact statement to address their plan for treatment and immediate response to the introduction of prohibited aquatic invasive species.
- Requires chemical treatment of ballast water and other requirements when claiming the emergency ballast discharge. Exempts the discharge from the definition of "pollution" under state Water Pollution Control standards and removes emergency discharge from the jurisdiction of the Department of Ecology.
- Allows the WDFW to issue a special operating authorization for passenger vessels conducting or assisting in research and testing activities.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

- Creates new tasks for the Ballast Water Work Group, and invites the Department of Ecology and a representative of the cruise ship industry to be members on the Ballast Water Work Group.
- Increases the penalty fee for unexchanged or untreated ballast water up to \$27,500 per day of continuing violation.
- Creates a Ballast Water Management Account to be used to support the ballast water management program and support research and monitoring.

**Hearing Date:** 3/28/07

**Staff:** Jaclyn Ford (786-7339).

**Background:**

**Watercraft:**

Invasive species are generally considered to be animal or plant species that are thriving in a geographical area where they are not native. The Washington Department of Fish and Wildlife (WDFW) has authority to manage aquatic nuisance species and is charged with tracking and proposing solutions to manage these species [RCW 77.12].

The Aquatic Invasive Species Prevention Account (Prevention Account) and the Aquatic Invasive Species Enforcement Account (Enforcement Account) were created by the Legislature in 2005 [RCW 77.12.879; RCW 43.43.400]. From the fees paid by each annual vessel registration, \$1.50 is deposited into the Prevention Account and \$0.50 is deposited into the Enforcement Account [RCW 88.02.050].

Funds in the Prevention Account are appropriated to the WDFW to develop an Aquatic Invasive Species Prevention Program (Prevention Program) for recreational watercraft [RCW 77.12.879].

Funds from the Enforcement Account are appropriated to the Washington State Patrol (WSP) to develop an Aquatic Invasive Species Enforcement Program (Enforcement Program) for recreational watercraft [RCW 43.43.400].

The WDFW and the WSP are required to submit a biennial report to the appropriate legislative committees by December 1, 2007, describing the actions taken in implementing the Aquatic Invasive Prevention and Enforcement Programs, along with suggestions for improvements [RCW 43.43.400].

**Ballast Water:**

All vessels involved in coastal traffic are required to exchange their ballast water at least 50 nautical miles offshore [RCW 77.120.030].

Vessels are allowed to discharge non-exchanged ballast water in three circumstances: (1) When it is not safe to perform open ocean exchange, or when design limitations of the vessel or equipment malfunctions prevent exchange; (2) When ships' ballast water originated in

Washington and has not been mixed with water or sediments from outside designated areas; and  
(3) When an approved ballast water treatment system is utilized [RCW 77.120.030].

On July 1, 2007, the discharge of improperly exchanged or treated ballast water into Washington waters is prohibited. The safety and design exemption for exchange will no longer be valid unless the ballast water was first treated [RCW 77.120.030].

A vessel that discharges improperly exchanged or treated ballast water without a valid exemption may result in a fine of up to \$5,000 [RCW 77.120.070].

All vessels of 300 gross tons or more, except military vessels, must file a ballast water reporting form. Vessel operators that fail to comply with the reporting requirements may be subject to a \$500 fine. Falsifying a ballast report may result in both a civil and criminal penalty [RCW 77.120.070].

### **Summary of Bill:**

#### **Aquatic Invasive Species Enforcement:**

Expenditures from the Enforcement Account may be appropriated to both the WSP and the WDFW to develop the Enforcement Program for recreational and commercial watercraft. Watercraft also includes watercraft transportation equipment, and watercraft auxiliary equipment.

The WSP will use the expenditures from the Enforcement Account to inspect recreational and commercial watercraft at mandatory port-of-entry weigh stations. The WDFW will use the funds to establish random check stations to inspect recreational and commercial watercraft. The WDFW will also provide inspection outside of check stations to anyone requesting inspection and provide a receipt indicating the watercraft is not contaminated.

Any person stopped at a check station, or that voluntarily submits to an inspection by a WDFW employee, that possesses watercraft or equipment that is contaminated with invasive species is exempt from the criminal penalties relating to invasive species if that person complies with WDFW directives for the proper decontamination of the watercraft and equipment.

A person is guilty of unlawfully avoiding aquatic invasive species check stations if they fail to obey check station signs, or fail to stop and report at a check station if directed by a uniformed WDFW officer. Unlawfully avoiding aquatic invasive species check stations is a gross misdemeanor.

A person is guilty of unlawfully introducing a prohibited aquatic animal species if a person fails to have a vessel inspected by WSP or WDFW prior to launching a vessel into Washington waters and the vessel is contaminated with an aquatic invasive species. Penalties may include forfeiture of the contaminated watercraft.

#### **Aquatic Invasive Species Prevention:**

Expenditures from the Prevention Account may be appropriated to the WDFW to develop the Prevention Program for recreational and commercial watercraft. Funds may be used to inspect recreational and commercial watercraft, transportation equipment, and outboard motors.

The WDFW is required to post signs and disseminate information to the public regarding invasive species prevention and inspection. All port districts, privately or publicly owned marinas, state parks, and other state agencies or political subdivisions that own or lease a boat launch must display a sign provided by the WDFW.

The WDFW will develop a programmatic environmental impact statement (EIS) to address the WDFW's plan for treatment and immediate response to the introduction of prohibited aquatic invasive species into Washington waters.

### **Ballast Water Discharge:**

A vessel is defined as a floating craft of 300 gross tons or more capable of carrying ballast water into the coastal waters of the state after operating outside of the coastal waters of the state. Vessels that are merely traversing the territorial sea of the United States and not entering or departing a United States port; not navigating the internal waters of the United States; or not discharging ballast water into state waters do not have to comply with ballast water discharge requirements.

Discharge of ballast water into state waters is authorized only if there has been an open sea exchange or if the vessel has treated its ballast water. The WDFW, in consultation with the Ballast Water Work Group (BWVG) will adopt, by rule, standards for the discharge of ballast water and implementation timelines.

When weather conditions, vessel limitations, equipment failure, or other extraordinary conditions make ballast water exchange or treatment a threat to the safety of the vessel, passengers, or crew, the vessel may discharge into state waters. However, the vessel must chemically treat the ballast water prior to discharge. This emergency discharge is subject to a fee up to \$5,000, and the discharge must be documented that only the minimum amount of ballast was discharged, the location of the discharge, the name and amount of chemical used to treat the ballast water, the emergency that required the discharge, and any other requirements set by rule by the WDFW. Discharge used under this emergency is not considered "pollution" under state Water Pollution Control standards and emergency discharge is removed from the jurisdiction of the Department of Ecology (DOE).

The WDFW will issue rules for exemption conditions, requirements, compliance plans, and recommended chemical for treatment and corresponding dose concentration levels.

### **The Ballast Water Work Group:**

The BWVG has several responsibilities, including working with Oregon to develop a consistent ballast water management program for the Columbia River, and providing assistance to the WDFW in the implementation and research of the ballast water management program. Two new tasks are added to the BWVG: inventory of invasive species around marine facilities, and an evaluation of other ship vectors of invasive species to form a baseline of information on existing known marine invasive species. The DOE and one representative of the cruise ship industry will also be invited to work on the BWVG.

The WDFW may issue a special operating authorization for passenger vessels conducting or assisting in research and testing activities to determine the presence of invasive species in ballast

water. The testing and research will be reviewed by the BWVG and the findings will be included in the BWVG July 1, 2009 report to the Legislature.

**Ballast Water Discharge Penalties:**

If a vessel discharges untreated or exchanged ballast water into state waters, regardless of circumstances, there may be a penalty imposed. The penalty may be up to \$27,500 per day of continuing violation. The WDFW will establish a schedule for any penalty or fee allowed under this act. Schedules must be based on criteria established in the WDFW rules.

**Ballast Water Management Account:**

A Ballast Water Management Account (Ballast Account) is created for the collection of appropriations, gifts, grants, donations, penalties, and mitigation fees. Funds deposited into the Ballast Account must be appropriated by the Legislature prior to expenditure. Expenditures may only be used to support the ballast water management program established by the WDFW and the BWVG, or support the research and monitoring required from the ballast water management program. Penalties deposited into the Ballast Account may only be used, in consultation with the BWVG, to support research and provide education and outreach related to the ballast water management program.

**Appropriation:** None.

**Fiscal Note:** Requested on March 20, 2007.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed.